

House Engrossed

State of Arizona
House of Representatives
Forty-seventh Legislature
First Regular Session
2005

CHAPTER 14

HOUSE BILL 2182

AN ACT

AMENDING SECTIONS 12-1191 AND 33-421, ARIZONA REVISED STATUTES; RELATING TO
REAL PROPERTY.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Section 12-1191, Arizona Revised Statutes, is amended to
3 read:

4 12-1191. Notice of pendency of action affecting title to real
5 property; filing; constructive notice to purchaser
6 or encumbrancer; release of notice of pendency of
7 action; failure to issue release; liability

8 A. In an action affecting title to real property, the plaintiff at the
9 time of filing the complaint, or thereafter, and the defendant at the time of
10 filing ~~his~~ THE DEFENDANT'S pleading when affirmative relief is claimed in
11 such pleading, or thereafter, may file in the office of the recorder of the
12 county in which the property is situated a notice of the pendency of the
13 action or defense. In any action to foreclose a mechanics' or materialmen's
14 lien pursuant to title 33, chapter 7, article 6, the lien claimant shall file
15 a notice of pendency of action as prescribed by section 33-998 within five
16 days of filing the action or raising the defense. The notice shall contain
17 the names of the parties, the object of the action or affirmative defense,
18 the relief demanded and a description of the property affected.

19 B. The recorder shall file the notice and record and index it in the
20 names of the parties to the action, and thereafter a purchaser or
21 encumbrancer of the property affected shall be held to have constructive
22 notice of the pendency of the action and the claims therein made EXCEPT AS
23 PRESCRIBED IN SUBSECTION D OF THIS SECTION.

24 C. If a notice of pendency of action has been recorded pursuant to
25 this section and the action is dismissed without prejudice for lack of
26 prosecution, the plaintiff or plaintiffs of the action ~~shall~~, within thirty
27 days after such dismissal, SHALL issue to the defendant of the action a
28 release of the notice of pendency of action. Such release shall be in the
29 form of a recordable document. Failure to grant such release shall subject
30 the person filing the notice of action or defense to liability in the amount
31 of one thousand dollars and also to liability for actual damages.

32 D. AFTER THE WITHDRAWAL OR RELEASE OF A NOTICE OF PENDENCY OF ACTION
33 OR RECORDATION OF A CERTIFIED COPY OF AN ORDER EXPUNGING A NOTICE OF PENDENCY
34 OF ACTION AND BEFORE THE RECORDATION OF A CERTIFIED COPY OF THE JUDGMENT OR
35 DECREE IN THE ACTION, THE FOLLOWING APPLY:

36 1. THE NOTICE OF PENDENCY OF ACTION AND ANY OF THE INFORMATION DERIVED
37 FROM THE NOTICE DOES NOT CONSTITUTE ACTUAL OR CONSTRUCTIVE NOTICE OF ANY OF
38 THE MATTERS CONTAINED IN THE NOTICE OR ANY MATTERS RELATED TO THE ACTION.

39 2. THE NOTICE OF PENDENCY OF ACTION AND ANY OF THE INFORMATION DERIVED
40 FROM THE NOTICE DOES NOT CREATE A DUTY OF INQUIRY IN ANY PERSON DEALING
41 THEREAFTER WITH THE AFFECTED PROPERTY.

42 3. EXCEPT FOR A PERSON WHO IS A NONFICTITIOUS PARTY TO THE ACTION AT
43 THE TIME OF RECORDING THE NOTICE OF WITHDRAWAL, THE RELEASE OF THE NOTICE OF
44 PENDENCY OF ACTION OR THE ORDER EXPUNGING THE NOTICE OF PENDENCY OF ACTION, A
45 PERSON SHALL NOT BE DEEMED TO HAVE ACTUAL KNOWLEDGE OF THE ACTION, ANY OF THE

1 MATTERS CONTAINED IN THE NOTICE OR ANY MATTERS RELATED TO THE ACTION, IF BOTH
2 OF THE FOLLOWING APPLY:

3 (a) THAT PERSON FOR VALUABLE CONSIDERATION BECOMES A PURCHASER,
4 TRANSFEREE, MORTGAGEE OR OTHER ENCUMBRANCER OF ANY INTEREST IN THE REAL
5 PROPERTY THAT IS SUBJECT TO THE ACTION.

6 (b) THAT PERSON ACQUIRES THAT INTEREST BY A CONVEYANCE THAT IS
7 RECORDED AFTER THE NOTICE OF WITHDRAWAL OR RELEASE OR ORDER OF EXPUNGEMENT
8 AND BEFORE THE RECORDING OF A CERTIFIED COPY OF A JUDGMENT OR DECREE ISSUED
9 IN THE ACTION.

10 4. A PERSON DESCRIBED IN PARAGRAPH 3 SHALL NOT BE DEEMED TO HAVE
11 NOTICE OF THE ACTION OR NOTICE OF ANY MATTERS RELATED TO THE ACTION EVEN IF
12 THE PERSON HAS ACTUAL KNOWLEDGE OF THE ACTION OR MATTER AND REGARDLESS OF
13 WHEN OR HOW THAT KNOWLEDGE WAS ACQUIRED.

14 Sec. 2. Section 33-421, Arizona Revised Statutes, is amended to read:

15 33-421. Nonconsensual lien; marketability of title

16 A. A nonconsensual lien, other than a lien recorded by a governmental
17 entity or political subdivision or agency, a validly licensed utility or
18 water delivery company, a mechanics' lien claimant or an entity created under
19 covenants, conditions, restrictions or declarations affecting real property,
20 is not valid unless the lien is accompanied by an order or judgment from a
21 court of competent jurisdiction authorizing the filing of the lien and does
22 not have the force or effect of law.

23 B. If a nonconsensual lien is accepted for recording as described in
24 subsection A, the recording officer shall accept for recording a notice of
25 invalid lien that is signed and submitted by the attorney general or county
26 attorney. The attorney general or county attorney shall mail a copy of the
27 notice of invalid lien to the person who is designated as creditor and to the
28 person who recorded the nonconsensual lien at the address of each as stated
29 on the recorded document. The purported lien is conclusively presumed to be
30 invalid when the invalid lien is recorded.

31 C. A recording officer or a county is not liable for accepting for
32 recording a nonconsensual lien pursuant to subsection A or a notice of
33 invalid lien pursuant to subsection B.

34 D. A nonconsensual lien that is recorded with the county recorder and
35 that is not recorded by an authorized entity pursuant to subsection A or that
36 is not ordered by the superior court does not affect the marketability of
37 title to the real property described in the nonconsensual lien AND SHALL NOT
38 CONSTITUTE ACTUAL OR CONSTRUCTIVE NOTICE OF ANY OF THE MATTERS CONTAINED IN
39 THE LIEN.

40 Sec. 3. Legislative intent; transferability

41 It is the intent of the Legislature that this act provide for the
42 absolute and completely free transferability of real property after the
43 expungement, withdrawal or release of a notice of pendency of action.

APPROVED BY THE GOVERNOR APRIL 1, 2005.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 1, 2005.

Passed the House February 28, 2005,

by the following vote: 58 Ayes,

0 Nays, 2 Not Voting

[Signature]
Speaker of the House

Norman L. Fyfe
Chief Clerk of the House

Passed the Senate March 24, 2005,

by the following vote: 30 Ayes,

0 Nays, 0 Not Voting

[Signature]
President of the Senate

Charmant B. Bunting
Secretary of the Senate

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF GOVERNOR

This Bill was received by the Governor this

28th day of March, 2005

at 2:14 o'clock P. M.

Wendiger Ybarra
Secretary to the Governor

Approved this 1 day of

April, 2005,

at 11:10 o'clock A. M.

[Signature]
Governor of Arizona

EXECUTIVE DEPARTMENT OF ARIZONA
OFFICE OF SECRETARY OF STATE

This Bill was received by the Secretary of State

this 1 day of April, 2005,

at 2:23 o'clock P. M.

Janice K. Brewer
Secretary of State

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